SAC portable (that is, the numbers assigned could move with customers if they chose to change wireless carriers).[7/]

Rather than responding to the Commission, Bellcore submitted a letter to the Commission announcing on August 16, 1993 its decision to resign the numbering responsibilities assigned to it by the MFJ Court. Since then, Bellcore has provided the Commission with no further information on the fairness of the process or on the feasibility of number portability. Bellcore's actions left the Commission with no method to determine whether all segments of the telecommunications industry had been fairly represented in prior industry numbering discussions and decisionmaking.[8/]

While the Commission has instituted a rulemaking proceeding to solicit comment on the future administration of numbering, both the BOCs and Bellcore have failed to provide the basic information the FCC must have for informed decisionmaking

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7/ See Nextel letter to Kathleen B. Levitz, Acting Chief, Common Carrier Bureau, dated July 28, 1993; see also letter from Time Warner, dated July 29, 1993 at 1-2; letter to Kathleen Levitz, Acting Chief, Common Carrier Bureau, letter from Comcast Corporation, dated July 28, 1993 at 1. Kathleen B. Levitz letter to the Director of NANP Administration, dated August 5, 1993.

8/ Based on representations by the cellular industry that an adequate framework for fair dissemination of 500 SAC numbers was in place, the Commission relented, and permitted Bellcore to begin the number assignment process. Informal reports indicate that these important mobility numbers have been exhausted long before the first auction for Personal Communications Services licenses has even taken place heightening Nextel's concerns about the administration of numbering.

in this area.[9/] Relying on industry forums dominated by LECs to develop number portability guidelines will derail or delay this necessary process for years. Because control of numbers translates into control of customers, the BOCs cannot be permitted to enter the interexchange market until they have committed to a timetable, enforceable with regulatory or legal sanctions, to implement full number portability. Unless monopoly control of number assignments is ended, all present MFJ restrictions on the BOCs must remain in place.

3. BOCs have discriminated in the provision of ONA services, circumventing regulation.

The BOCs have also discriminated in the provision of open network architecture ("ONA") services and thereby precluded the development of effective competition. ONA provides the BOCs with opportunities to manipulate access to the network to their advantage and their competitors' disadvantage, even though the ONA guidelines were formulated precisely because of the BOCs' monopoly power and unparalleled ability to manipulate the pricing of network functions to disadvantage competitors.[10/] It is telling that the BOC Motion does not rely on the availability of ONA as an effective regulatory mechanism to achieve even-handed

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9/ See Comments of Nextel Communications, Inc., CC Docket No. 92-237, filed June 7, 1994 at 10-12; Reply Comments of Nextel, CC Docket No. 92-237, filed June 30, 1994 at 1-3.

10/ See generally Kelley, Chris L. "The Contestability of the Local Network: The FCC's Open Network Architecture Policy," 45 Fed. Comm. L.J. 89 (1992).

service availability. Recent court decisions confirm that the FCC's ONA policy as implemented is a mere shadow of its original promise, raising significant concerns about its efficacy.[11/]

Despite its lack of prominence in the BOC Motion, ONA is a major component of the FCC's non-structural safeguards and cost accounting rules. The generally acknowledged failure of ONA and the failure of general non-discrimination requirements in interconnection point to a continuing substantial likelihood that the BOCs will impede competition in the interexchange markets in a manner similar to their current behavior in local markets. In light of this evidence, the time has not come to lift the MFJ Decree prohibitions from the BOCs.

B. Potential Competition Is Not A Sufficient Predicate Upon Which to Vacate the Decree.

In addition to relying on existing regulation to justify vacating the Decree, the BOCs also argue that the potential for competition in the telecommunications marketplace constrains their ability to act anti-competitively.[12/] This is the same type of analysis the BOC-dominated cellular industry pressed on the FCC in its implementation of the "regulatory

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11/ See e.g. California v. FCC, No. 92-70083, No. 92-70186, No. 92-70217, No. 92-70261, 1994 U.S. App. LEXIS 29001, at* 31-34 (9th Cir. October 18, 1994).

12/ See United States v. Western Electric Co., Inc., Motion of Bell Atlantic Corporation, Bellsouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation To Vacate The Decree, Civil Action No. 82-0192 (HHG) at 53-67 (D.C. Cir. filed July 6, 1994).

parity" provisions of the Omnibus Budget Reconciliation Act of 1993.[13/] In general, the cellular industry argued that the potential competition to be provided by ESMR and Personal Communications Services made existing regulations that singled out cellular services for heightened regulatory scrutiny unnecessary. In addition, they argued that under this analysis the cellular industry did not enjoy market power within the broader commercial mobile services market.

After acknowledging in its expectation that ESMR and other CMRS operators could eventually provide competition to cellular, the FCC concluded that the cellular industry is not currently competitive.[14/] The FCC stated its intent to conduct additional proceedings to ensure the development of competition in the commercial mobile services market despite the recognized market power of cellular operators. The FCC did not accept potential competition as a basis to deregulate the cellular industry. Similarly, the Department should not accept the argument of potential wireline competition as a basis for vacating the MFJ in this proceeding.

This is not the time for the Department or the MFJ Court to abandon the important pro-competitive safeguards of the MFJ. For robust long-term competition to develop, not only in

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13/ See Communications Act of 1934 § 332(c), 47 U.S.C. § 332(c) (as amended by the Omnibus Budget Reconciliation Act of 1993); see also Second Report and Order, 9 FCC Rcd 1411 (1994).

14/ 9 FCC Rcd at 1472.

the local exchange but in interexchange and wireless services dependent on interconnection with the local exchange, there must be a continuing, enforceable, meaningful obligation on the BOCs to provide reasonable interconnection, and essential network services and functions on an unbundled, nondiscriminatory basis. The BOC Motion has provided no evidence that this factual predicate to consideration of Decree relief exists.

Respectfully submitted,

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November 16, 1994

CERTIFICATE OF SERVICE

I, Laura H. Phillips, hereby certify that on this 16th day of November, 1994, true and correct copies of Comments for Nextel Communications, Inc. on the Motion of Bell Atlantic, BellSouth, NYNEX and Southwestern Bell to Vacate the Decree were mailed, first-class-postage paid, to all parites shown on the attached service list.

Laura H. Phillips

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CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 19th day of May, 1995, I caused a copy of the foregoing "REPLY COMMENTS OF COX ENTERPRISES, INC." to be sent via hand delivery to the following:

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The Honorable James H. Quello
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The Honorable Rachelle B. Chong
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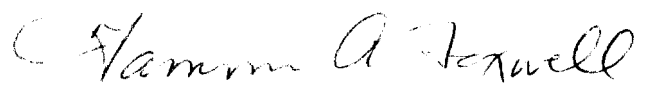

Tammi A. Foxwell